

**CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
May 17, 2005
6:00 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard**

I. ROLL CALL (6:00 p.m.)

II. ADJOURN TO CLOSED SESSION

**1. Conference with Legal Counsel – Existing Litigation
(Pursuant to Government Code Section 54956.9(a))
City of Milpitas vs. Turner Construction et al. Santa Clara County Superior Court Case
No. 103CV814946 consolidated with 103CV008400**

**2. Conference with Negotiator – Collective Bargaining
(Pursuant to Government Code 54957.6)
City Negotiator: Art Hartinger
Organization Represented: Milpitas Police Officers Association
Anticipated Issues Under Negotiation: Wages, Hours, Working Conditions and Benefits.**

**III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if
required pursuant to Government Code Section 54957.1, including the vote on abstention
of each member present**

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES (May 3, 2005)

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamations

- Milpitas Veterans Club
- Memorial Day Proclamation

Commendations

- Milpitas Police Officer David Morris
- Milpitas Veterans Club Surviving Members

Certificate of Reappointment

- Barbara Ebright, Senior Advisory Commission, Alternative #1

Certificates of Appreciation

- Food Donor Certificates for the April Joint City/School District Evacuation and Mass Feeding Exercise at Joseph Weller Elementary School

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the

Clerk's record, and limit their remarks to under three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. APPROVAL OF AGENDA

XII. CONSENT CALENDAR (Items with Asterisks)

XIII. PUBLIC HEARINGS

- 1. Consider Aerial Station and Future Line Segment Alternative to Retained Cut Design for the Montague/Capitol BART Facility (Staff Contact: Tambri Heyden, 586-3280)**
- 2. Formation of City of Milpitas Community Facilities District No. 2005-1 (Public Services) (Staff Contact: Emma Karlen, 586-3145)**

XIV. UNFINISHED BUSINESS

- 3. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)**

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (May 3, 2005)

RA4. Approval of Agenda

RA5. Consideration of Request to Remove Deed Restriction from Grant Deed, Remove Disposition and Development Agreement from Record and Rescind Sales and Use Tax Ordinance Affecting Billings Chevrolet Property (Staff Contact: Steve Mattas, 586-3040)

RA6. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

- 4. Consider and Direct Staff on Funding Request for Attendance at 2005 Global Leaders Youth Conference, Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)**
- 5. Define City's Legal Position Regarding Mayor Esteves and Councilmember Giordano's Potential Conflict of Interest Regarding the Sign Code Ordinance and the City's Request to the California Fair Political Practices Commission, Mayor Esteves (Staff Contact: Richard Pio Roda, 586-3040)**

6. Approve the Mayor's reappointments to the Arts Commission, Bicycle Transportation Advisory Commission, Citizens Emergency Preparedness Advisory Commission, Community Advisory Commission, Economic Development Commission, Library Advisory Commission, Mobile Home Park Rental Review Board, Parks Recreation and Cultural Resources Commission, Recycling and Source Reduction Advisory Commission, Senior Advisory Commission, Telecommunications Commission and Youth Advisory Commission, Mayor Esteves (Staff Contact, Richard Pio Roda, 586-3040)

XVII. NEW BUSINESS

7. Report on Terrace Gardens Board of Directors Selection and Appointment Process (Staff Contact: Felix Reliford, 586-3071)
8. Update on On-Line Permitting – Mayor Esteves (Staff Contact: Bill Marion, 586-2701)
- * 9. Approve Payment to Embassy Suites, Milpitas, for 2005 Commissioners' Dinner and Appropriate Monies to Recreation Assistance Program (RAP) Holding Account 1396-2500 and Authorize Holding Account Expenditure (Staff Contact: Bonnie Greiner, 586-3227)
- * 10. Note Receipt and File Report: Status of Creek Trail Permits from Santa Clara Valley Water District (SCVWD) for Berryessa and Coyote Creek Trails (Project # 5074 and #4206). (Staff Contact: Greg Armendariz, 586-3317)
- * 11. Status of Heritage Tree Program and Tree Planting Program (Staff Contact: Tambri Heyden, 586-3280 and Carol Randisi, 586-2601)

XVIII. ORDINANCES

- * 12. Adopt Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I and Section 13.08 of Chapter 210 of Title V of the Milpitas Municipal Code to provide that Notices of Appeal to the City Council Shall only be Effective Upon Timely Receipt of Payment of the Fee Adopted or Amended by Resolution of the City Council and to Provide for Appeals of the Animal Regulation Administrator's Decisions to be Heard by the City Council (Staff Contact: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)
13. Consideration of Urgency Ordinance Establishing a 45-day Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)

XIX. RESOLUTIONS

- * 14. Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Program No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)
- * 15. Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Program No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)

- * 16. **Adopt Resolution Granting Initial Acceptance: Main Sewage Pump Station Demo and Site Improvements, (Project No. 6079), (Staff Contact: Steve Erickson, 586-3414)**
- * 17. **Adopt Resolution Granting Initial Acceptance: Singley Area Street Rehabilitation, Project No. 4200 - Phase 3 (Staff Contact: Doug De Vries, 586-3313)**

XX. BIDS AND CONTRACTS

- * 18. **Approve Agreement for Commercial Recycling Outreach Campaign to Pat Davis Design Group (Staff Contact: Leslie Stobbe, 586-3352 and Mark Rogge, 586-3403)**
- * 19. **Approve Agreement with Guttman & Blaevoet for HVAC Mechanical System Evaluation of City Hall (Staff Contact: Chris Schroeder, 586-3161)**
- * 20. **Approve the Agreement with Pyro Spectaculars for the Annual 4th Of July Fireworks Display (Staff Contact: Chris Schroeder, 586-3161)**
- * 21. **Award Bid for Commercial Exercise Equipment (Staff Contact: Chris Schroeder, 586-3161)**
- * 22. **Approve A Maintenance Agreement With Tiburon, Inc. For Software Support For The Police Department Records Management System (Staff Contact: Terry Medina, 586-2703)**
- * 23. **Approve The Fourth Amendment To The Senior Nutrition Contract Between The County Of Santa Clara (Social Services) And The City Of Milpitas (Kathleen Yurchak, 586-3209)**
- * 24. **Approve the First Amendment to the Contract Between the City Of Milpitas and New Orient Restaurant and Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**
- * 25. **Approve Plans and Specifications and Authorize Advertisement for Bid Proposals: 2005 Slurry Seal Project (Project No. 4223) (Staff Contact: D. De Vries, 586-3313)**
- * 26. **Authorize the City Manager to Execute Agreement: Central Pacific Engineering, Inc., Sports Center Underwater Pool Lighting (Project No. 8163) (Staff Contact: G. Armendariz, 586-3317)**
- * 27. **Approve Plans and Specifications and Authorize the Advertisement for Bids: Berryessa Pump Station, Project No. 8138, (Staff Contact: Doug De Vries, 586-3313)**
- * 28. **Approve Specifications and Authorize Advertisement for Bid Proposals: Interim Senior Center Re-roofing, Project No. 8134 (Staff Contact: Mark Rogge, 586-3403)**
- * 29. **Approve Debris Box Agreements With All Trash Company (Staff Contact: Darryl Wong, 586-3345)**
- * 30. **Authorize City Manager To Execute Agreement Amendment: URS Corporation Americas (URS), Various Projects (Staff Contact: Doug De Vries, 586-3313)**

XXI. CLAIMS AND DEMANDS

- * 31. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**
- * 32. **Release of Surplus Fire Equipment to the Milpitas Historical Society (Staff Contact: Chris Schroeder, 586-3161; Bill Weisgerber, 586-2811)**

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 7, 2005, AT 7:00 P.M.**

B E C O M E A C I T Y C O M M I S S I O N E R !

Currently, there are openings on the following City Commissions:

- ▶ **Arts Commission**
- ▶ **Bicycle Transportation Advisory Commission**
- ▶ **Citizens Emergency Preparedness Advisory Commission**
- ▶ **Community Advisory Commission**
- ▶ **Economic Development Commission**
- ▶ **Mobile Home Rental Review Board**
- ▶ **Open Government Commission**
- ▶ **Parks, Recreation, and Cultural Resources Commission**
- ▶ **Recycling and Source Reduction Advisory Commission**
- ▶ **Youth Advisory Commission**

Applications are available online at www.ci.milpitas.ca.gov or in the Agenda rack outside the Council Chambers. Contact the City Clerk's Office (586-3002) for information.

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Agenda Reports
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XIII. PUBLIC HEARINGS

- 1. Consider Aerial Station and Future Line Segment Alternative to Retained Cut Design for the Montague/Capitol BART Facility (Staff Contact: Tambri Heyden, 586-3280)**

Background: Additional information is required from the Valley Transportation Authority (VTA) in order to properly analyze all issues relating to the proposed aerial Montague/Capitol BART line segment and station alternative to the retained cut design. At the Council Transportation Subcommittee meeting on April 28, 2005, when this alternative was presented, VTA indicated they would provide the requested information to City staff the following week. While the information was received, it did not allow enough time for staff to thoroughly review it prior to preparation of the written report to Council. In addition, VTA has indicated there is further information and they would like to provide that is not yet available, and will delay their presentation to their Policy Advisory Board to June. Therefore, staff recommends that the City Council open the public hearing on this item and continue this item to the City Council meeting of June 21, 2005.

Recommendation:

1. Open the public hearing.
2. Continue this item to the City Council meeting of June 21, 2005.

- 2. Formation of City of Milpitas Community Facilities District No. 2005-1 (Public Services) (Staff Contact: Emma Karlen, 586-3145)**

Background: At its January 18th 2005 meeting the City Council approved the Elmwood Residential Development Project and the Disposition and Development Agreement between the Milpitas Redevelopment Agency and KB Homes Southbay Inc (developer). As part of the Disposition and Development Agreement, the development of the site is subject to the establishment and annexation into a Community Facilities District (CFD) for park maintenance and street landscape maintenance.

On April 5, 2005, the City Council adopted a resolution declaring its intention to establish a Community Facilities District and to authorize the Levy of Special Taxes Pursuant to the Mello-Roos Community Facilities Act of 1982 (Resolution). The adoption of the Resolution called for a public hearing after 30 days from the date of adoption to inquire into the formation of the CFD, the services eligible to be funded by the CFD, the levy of special taxes in the CFD, and the possible future annexation of territory to the CFD. The developer has submitted a petition to form the CFD and waived any requirement regarding the timing of the election so that the election can be held immediately after it has been called by the City Council.

The area included within the Community Facilities District, at formation, includes the residential portion of Parcel D recently acquired by the developer.

The service provided by the Community Facilities District include all direct and incidental costs related to providing park maintenance and street landscape maintenance services, including but not limited to the maintenance of parks, parkways, street median and right of way areas, interchange areas and improvements, plazas, light rail corridors, open space areas and other similar or related areas in the City of Milpitas (the "City"). The CFD may fund any of the following related to the services described in the preceding sentence: obtaining, constructing, furnishing, operating and maintaining equipment, apparatus or facilities related to providing the services and/or equipment, apparatus, facilities or fixtures in areas to be maintained, maintaining street lighting, irrigation systems and other appurtenances, paying the salaries and benefits of personnel necessary or convenient to provide the services, payment of insurance costs and other related expenses and the provision of reserves for repairs and replacements and for the future provision of services. Any services to be funded by the CFD must be in addition to those provided in the territory of the CFD before the date of creation of the CFD, and may not supplant services already available within that territory when the CFD is created. It is expected that the services will be provided by the City, either with its own employees or by contract with third parties, or any combination thereof.

The proceedings for the Formation of the Community Facilities District are as follows:

Staff will present a report on the Community Facilities District including a brief description of the services and the cost of providing such services.

The public hearing will follow to receive comments from the public.

After the City Council's discussion, the City Council will consider adoption of two resolutions, one to form the Community Facilities District No. 2005-1, and the other to call for Special Election within the District.

The City Clerk will officially open the ballot, announce the results of the election, and complete one copy of the Canvass and Statement of Result of Election.

The City Council will consider adoption of a resolution declaring results of the Special Election and introduce an Ordinance levying special taxes within the CFD.

Recommendation:

1. Close the public hearing.
2. Adopt A Resolution of Formation of City of Milpitas Community Facilities District No. 2005-1 (Public Services), Authorizing the Levy of a Special Tax within the District, Preliminarily Establishing an Appropriations Limit for the District and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors of the District.
3. Adopt A Resolution of the City Council of the City of Milpitas Calling Special Election Within Community Facilities District No. 2005-1 (Public Services)
4. Adopt A Resolution of the City Council of the City of Milpitas Declaring Results of Special Election and Directing Recording of Notice of Special Tax Lien.
5. Waive reading beyond title.
6. Introduce Ordinance No. 268.

XIV. UNFINISHED BUSINESS

3. Review and Approve Ethics Project Final Report, Recommendations and Activities for 2005 and 2006 (Staff Contact: Tambri Heyden, 586-3280)

Background: At the May 3, 2005 City Council meeting, the Council postponed further discussion and taking action on this agenda item until their May 17, 2005 meeting, so the city's ethics consultant could be in attendance.

The final deliverable under the Ethics Project contract with Dr. Shanks is preparation of a final report that summarizes the first year of the project, assesses its success and makes recommendations for improvements. This final report, titled ""Sustaining *Ethics First!*: A Three-Year Plan for Leadership and Public Trust", dated February 22, 2005, is included in the Council's agenda materials. The report has been edited by the City's project manager for format and typographical errors only and as with past major deliverables, has been reviewed by the Ethics Steering Committee and the Community Advisory Commission.

The report contains seven recommendations and three goals for building leadership and public trust over the next two years. The seven recommendations are as follows:

1. Extend the time the Council spends sharing its decision reasoning with citizens, utilizing the pocket card. (The pocket card was distributed at the first Council training session.)
2. Hold an additional training session for the Commissioners who did not attend one of the training sessions and every effort should be made to gain signatures from 100% of the Council, Commissioners and senior staff who have not signed the Code of Ethics.
3. Take advantage of the Ethics Consultant's pro bono offer to design and/or facilitate the next two Council meeting moments of reflection.
4. Direct the City Attorney to add language to the new Open Government Ordinance to strengthen the lobbyist section.
5. Establish a permanent oversight committee to guide the Ethics Program. The committee should be comprised of six Community Advisory Commission members and three staff members – the Director of Planning and Neighborhood Services, the Human Resources Director and the Information Technology Director. Further, the Program should be resumed this current year.
6. Give the Lead Ethics Evaluator staff support, besides the current assistance from the City Clerk, such as from the Assistant City Attorney, to attend the ethics hearings and assemble non-partisan background pieces and statements of fact. Empower and remunerate the Lead Evaluator to work with parties involved in a complaint to see if a fair resolution can be reached without having to conduct a hearing.
7. Adopt the Ethics Project Final Report and activities recommended for 2005 and 2006 related to three goals presented to the Council last summer. The goals and associated activities are as follows:

GOAL 1 – Make the Code practical and useful for public officials who are expected to follow it.

2005 ACTIVITIES: a) The Council, Commissioners and senior staff should have three programmatic contacts, one a quarter, two of which would be workshops, the third would be decided by the oversight committee using the City's website for ideas. b) A skills assessment would be conducted prior to the first contact and an evaluation performed at the end of each contact.

2006 ACTIVITIES: a) Hold a Council workshop to building public trust as Council members during an election, b) hold a Candidates workshop, c) assist the League of Women Voters in a Final Word Forum, d) conduct a post-election assessment town hall meeting, and e) make consultant available for guidance to candidates.

GOAL 2 – Make the Code an integral part of the organizational culture, style, and business of the City.

2005 ACTIVITIES: a) Plan a process to build a culture of recognition beginning with the Commissioner recognition dinner. b) Implement the Community Partners Program using the forms developed in 2004. c) Revise the ethics website to make it easier to use and to share ideas and problems. d) Make ethics coaching available to Council members who request it.

2006 ACTIVITIES: a) Engage the Council, Commissioners and senior staff in identifying stumbling blocks and developing skills to overcome them. b) Assess whether the Ethics Code needs updating. c) The City Manager should participate with the oversight committee in plan the programmatic contacts for senior staff referenced in Goal 1, 2005 Activities.

GOAL 3 – Make the Code real in the lived experiences of Milpitas residents.

2005 ACTIVITIES: a) Conduct quarterly ethics program awareness communication to residents. b) Gain assistance and ethics program goals commitment from political consultants, employee unions, newspapers, and the South Bay Labor Council.

2006 ACTIVITIES: a) Plan a full-scale public information campaign designed to give voters the skills they need to recognize ethical campaign candidates.

Recommendation: With respect to the recommendation to establish a permanent oversight committee, the oversight committee that has been in place for year one of the Ethics Project is the Ethics Steering Committee which is comprised of three CAC members appointed by the CAC – Craig Ranker, Jenifer Lind and Joselito Abelardo and five staff members appointed by the City Manager – Tambri Heyden (project manager and Acting Planning and Neighborhood Services Director), Bill Weisgerber (Fire Chief), Mike McNeely (former City Engineer), Bill Marion (Information Technology Director) and Cherie Rosenquist (Human Resources Director) with legal support provided by Assistant City Attorney John Bakker. Both the Steering Committee and the CAC recommend that CAC representatives be appointed by the CAC and staff representatives be appointed by the City Manager, rather specifically designated by name or position. With this caveat, the CAC and Steering Committee recommend the Council approve Dr. Shanks' final report, recommendations, and activities for 2005 and 2006.

XV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes (May 3, 2005)

RA4. Approval of Agenda

RA5. Consideration of request to remove deed restriction from Grant Deed, remove Disposition and Development Agreement from record and rescind Sales and Use Tax ordinance affecting Billings Chevrolet property.

Background: In December of 1992, the Agency entered into a Disposition and Development Agreement (“DDA”) with Billings Chevrolet. In consideration of the fact that Billings advanced funds to construct a series of improvements at the site, the Agency committed to share a portion of sales tax generated at the site with Billings Chevrolet. The City, in turn, also entered into an agreement to share sales tax with the Redevelopment Agency. Under a promissory note executed by the Agency, the Agency was required to make twelve annual payments from the sales tax revenue received from the State Board of Equalization (“SBE”). This revenue was based on the taxable sales reported by Billings Chevrolet to the SBE plus a proportionate percentage of the total statewide and countywide unallocated pool received by the City and the Agency. Under a formula, the Agency paid Billings a fixed annual amortized amount (principal and interest) of the note, paid any deficit owed to Billings from previous years due to insufficiency of the sales tax revenues, used 50% of the remaining sales tax revenue to prepay the principal on the promissory note, and the remaining 50% of sales tax revenue then went to the Agency.

Billings currently desires to sell the property and the transaction is in escrow. As a part of escrow, the buyer has discovered the various encumbrances on the property resulting from the DDA and the original grant deed (which restricts use of the site for auto sales and services through 2012, and to uses specified in the Redevelopment Plan through 2021). The property owner has requested that the Agency remove the deed restriction in the Grant Deed, remove the DDA from title record, and also rescind the ordinance implementing the sales tax sharing arrangement.

At this point, the Agency has completely paid off the promissory note. In fact, due to an oversight, the interest portion of the annual amortized amount was not credited due to prepayment of the principal, and the Agency has overpaid Billings by \$37,699.90.

If the deed restriction were to stay in place, as discussed above, the site would be restricted to auto sales and services through 2012, and to uses specified in the Redevelopment Plan through 2021. To fulfill Billings request, the Agency can reconvey its interest in the deed restriction, and request that the DDA be removed from record. If the Council wishes to do so, it can direct staff to effect the reconveyance. As a condition of the reconveyance, staff would collect on the overpayment of the promissory note, and would additionally require that the attorney for Billings prepare drafts of all instruments necessary to effect the requested actions, to be reviewed by the City Attorney.

Recommendation: Consider the proposed actions and, if the Council desires: Authorize the City Manager to execute the documents necessary to effect reconveyance of the Agency’s interest in the deed restriction and remove the DDA from record; and Introduce Ordinance No. 269 repealing Ordinance 192.6 in its entirety and waive reading beyond the title.

RA6. Agency Adjournment

XVI. REPORTS OF OFFICERS AND BOARDS

City Council

4. **Consider and Direct Staff on Funding Request for Attendance at 2005 Global Leaders Youth Conference: Mayor Esteves (Staff Contact: Cindy Maxwell, 586-3282)**

Background: The Chair of the Milpitas Youth Advisory Commission, Joseph Hall, is requesting \$1,000 to help fund his attendance at the 2005 Global Leaders Youth Conference this summer in Washington D.C. and New York. Funding from the Council's Community Promotions budget (balance \$7,200) has been used in the past when requests of this type have been considered.

Recommendation: Consider request and direct staff as appropriate.

5. **Define City's Legal Position Regarding Mayor Esteves and Councilmember Giordano's Potential Conflict of Interest Regarding the Sign Code Ordinance and the City's Request to the California Fair Political Practices Commission, Mayor Esteves (Staff Contact: Richard Pio Roda, 586-3040)**

BACKGROUND: On April 19, 2005, the City Attorney's Office issued a confidential attorney-client privileged memo to the Council responding to Councilmember Giordano's request for advice regarding possible conflicts of interest she and the Mayor may have when voting on the proposed sign code ordinance, considering Councilmember Giordano's employment as a real estate agent and Mayor Esteves holding a real estate agent license.

The Open Government Ordinance became effective May 5, 2005. The memo was issued before the Open Government Ordinance effective date. Therefore the privilege was asserted, according to the City's then current business practice.

The Open Government Ordinance prohibits the Council from asserting the attorney-client privilege on advice from the City Attorney's Office to the Council related to the Open Government Ordinance, the Brown Act, the California Public Records Act and the California Political Reform Act. Future advice and memos on such matters will not be attorney-client privileged.

RECOMMENDATION: Council consider waiving the attorney-client privilege for the memo dated April 15, 2005 and issued to the Council April 19, 2005, Subject: Conflict of Interest - Real Estate Agents and Sign Code Ordinance.

6. **Approve the Mayor's reappointments to the Arts Commission, Bicycle Transportation Advisory Commission, Citizens Emergency Preparedness Advisory Commission, Community Advisory Commission, Economic Development Commission, Library Advisory Commission, Mobile Home Park Rental Review Board, Parks Recreation and Cultural Resources Commission, Recycling and Source Reduction Advisory Commission, Senior Advisory Commission, Telecommunications Commission and Youth Advisory Commission, Mayor Esteves (Staff Contact: Richard Pio Roda, 586-3040)**

BACKGROUND: Mayor Esteves is recommending the following appointments and reappointments to City commissions:

Arts Commission

Appoint Alternate Harriet McGuire to the existing vacancy with a term expiring October 2006.

Appoint Juniel Butler from Alternate No. 2 to Alternate No.1 with a term expiring October 2006.

Appoint Archana Aragon to the Alternate No. 2 position with a term expiring October 2005.

Bicycle Transportation Advisory Commission

Appoint Miljon Buqing to the existing vacancy with a term expiring August 2007.

Appoint Kayci Nguyen from Alternate No. 2 to Alternate No. 1 with a term expiring August 2006.

Appoint Eugene Simmons to the Alternate No. 2 position with a term expiring August 2005.

Citizens' Emergency Preparedness Advisory Commission

Reappoint Russ Cherry and Brian Shreve to terms expiring June 2008.

Appoint Alternate Michael Berryhill to an existing vacancy with a term expiring June 2006.

Appoint John Pilger from Alternate No. 2 to Alternate No. 1 with a term expiring June 2007.

Appoint Nancy Gampon to the Alternate No. 2 position with a term expiring June 2005.

Community Advisory Commission

Appoint Alternate Jennifer Lind to an existing vacancy with a term expiring January 2008.

Appoint Danny Fang from Alternate No. 2 to Alternate No. 1 with a term expiring January 2007.

Appoint Michael Queenan from Alternate No. 3 to Alternate No. 2 with a term expiring January 2007.

Appoint Nelson Villegas to the Alternate No. 3 position with a term expiring January 2007.

Appoint Reena Choudhury to the Alternate No. 4 position with a term expiring January 2006.

Economic Development Commission

Reappoint Dhaval Brahmhatt and Vince Songcayawon, terms expiring April 2008.

Appoint Alternate Tomo Nguyen to an existing vacancy with a term expiring April 2007.

Appoint Alternate Charlene Tsao to an existing vacancy with a term expiring April 2007.

Appoint Pat Songsiri to the Alternate No. 1 position with a term expiring April 2007.

Appoint Minh Nguyen to the Alternate No. 2 position with a term expiring April 2006.

Library Advisory Commission

Reappoint Sonny Wang, Sen Fan and Carmen Montano, terms expiring June 2008.

Mobile Home Park Rental Review Board

Reappoint Milan Dobro to a term expiring June 2008.

Appoint Florence Romito to an existing vacancy with a term expiring June 2007.

Parks, Recreation and Cultural Resources Commission

Reappoint Bob McGuire to a term expiring June 2008.

Appoint Alternate Kathryn Gray to an existing vacancy with a term expiring June 2008.

Appoint Alternate Raymond Serena to an existing vacancy with a term expiring June 2007.

Appoint Dave Sandhu to the Alternate No. 1 position with a term expiring June 2006.
Appoint Robert Burrill to the Alternate No. 2 position with a term expiring June 2007.

Recycling & Source Reduction Advisory Commission

Appoint Alternate Patrick Yung to an existing vacancy with a term expiring October 2007.

Appoint Eulalio Mercado from Alternate No. 2 to Alternate No. 1 with a term expiring October 2007

Senior Advisory Commission

Reappoint Bal Daquigan and Amanda Santos, terms expiring December 2007.

Telecommunications Commission

Reappoint Albert Alcorn, William Lam, Paul Peterson and Gunawan Alisantosa to new two-year terms expiring January 2007.

Appoint Alternate Aaron Ettinger to an existing vacancy with a term expiring January 2007.

Appoint Satish Kuman Bansal to the Alternate No. 1 position with a term expiring January 2007.

Appoint Syed Afar Ali Bilgrami to the Alternate No. 2 position with a term expiring January 2006.

Youth Advisory Commission

Appoint Liberty Hilario to the Alternate No. 2 position with a term expiring September 2005.

Appoint Lorden Fok to the Alternate No. 3 position with a term expiring September 2005.

Appoint Roxane Lachance to the Alternate No. 4 position with a term expiring September 2005.

Copies of current applications for these commissions are included in the Council's agenda packets.

For the Council's information, a copy of the City Council Subcommittee on Appointments recommendations is also included in the Council's agenda packets.

RECOMMENDATION: Approve the Mayor's appointments and reappointments to Commissions.

XVII. NEW BUSINESS

7. Report on Terrace Gardens Board of Directors Selection and Appointment Process (Staff Contact: Felix Reliford, 586-3071)

Background: At its meeting on March 24, 2005, the Terrace Gardens Board of Directors conducted its interviewing process for the appointment of six (6) new board of director members. A total of ten (10) candidates applied and were interviewed by the existing board to serve on the Board of Directors. At the time of the interviewing process, the Board of Directors consisted of three (3) existing members: 1) Councilmember Debbie Giordano, 2) Interim City Manager, Charles Lawson, and 3) Jim Connolly.

Upon completion of the interviewing process, the following candidates were selected to serve on the newly formed Terrace Gardens Board of Directors:

- Lucy Carlton

- Dolores Hovey
- Andrew La
- Richard Ruth
- Steve Tao
- Robert Yen

The process used to inform the public in regards to the opportunity to apply for Terrace Gardens Board of Directors consisted of the following:

A *Milpitas Post* March 10, 2005 article on the status of the previous Terrace Gardens Board of Directors included information and a phone number to call at the end of the article, if any residents/persons were interested in obtaining an application to apply for the vacant board of director positions. Specifically, the announcement stated, "The Terrace Gardens Board of Directors is accepting applications. For information, call 946-9034."

Staff was asked to contact previous Terrace Garden Board of Directors within the past five years to see if they had any desire to be interviewed and potentially selected to serve on the new board of directors. Phone calls and letters were sent to the following previous board of directors:

- Jim Lawson
- Anna Ogden
- J. Dan Schuhmann, Jr.
- Carmen Razo
- Jim Yee
- John Luk

Finally, staff was asked to also contact the previous Terrace Gardens Board of Directors to determine if they had any interest in reapplying to serve on the Board of Directors. The following individuals were contacted by phone and/or by letters:

- Ron Lind
- Donald Peoples
- Gerald Rosenquist
- Celia Salazar
- Thomas Valore
- Jim Yee

All potential candidates (past 5 years and previous Board of Directors) were sent letters with 1) applications to apply, 2) deadline to submit the application, and 3) the date the interviews would be conducted.

Included in the Council's agenda packet is a copy of the letters sent to all previous Board of Directors, the Terrace Gardens Board of Directors application, and the current budget for Terrace Gardens.

Recommendation: Note receipt and file.

8. **Update on On-Line Permitting: Mayor Esteves (Staff Contact: Bill Marion, 586-2701)**

Background: At the Mayor's request, this item is being presented to discuss the status of On-Line permitting. Staff has prepared a written report and a presentation on the subject. Please see attachment in binder.

Recommendation: Note receipt and file staff report.

- * 9. **Approve Payment to Embassy Suites, Milpitas, for 2005 Commissioners' Dinner and Appropriate Monies to Recreation Assistance Program (RAP) Holding Account 1396-2500 and Authorize Holding Account Expenditure (Staff Contact: Bonnie Greiner, 586-3227)**

Background: On April 20, 2005, the City of Milpitas hosted the 2005 Commissioners' Dinner, at the Embassy Suites in Milpitas. The Commissioners' Dinner honored City Commissioners for their service to the Milpitas Community in 2004. A total of \$15,000 is budgeted for this event to include meals, gift, invitations, certificates/certificate holders, and other necessary supplies. The Commissioner's chose to donate their gift monies to the Recreation Assistance Program (RAP), in lieu of receiving a personal gift for the City of Milpitas. To date a total of \$2,596.15 has been spent on the hotel ballroom deposit, invitations, certificate supplies, sound system contract and miscellaneous supplies. The outstanding balance owed to the Embassy Suites for Dinner is \$7,407.03, leaving a balance of \$4,993.82 to be donated to RAP.

Recommendation: Approve payment to the Embassy Suites in the amount of \$7407.03 from account 100-100-4201 with the remaining balance of \$4993.82 to be appropriated from 100-100-4201 into the Recreation Assistance Program (RAP) Holding Account, HA 1396-2500 and authorize use of the appropriated money in Holding Account 1396-2500

- * 10. **Note Receipt and File Report: Status of Creek Trail Permits from Santa Clara Valley Water District (SCVWD) for Berryessa and Coyote Creek Trails (Project # 5074 and #4206). (Staff Contact: Greg Armendariz, 586-3317)**

Background:

Last fall, Santa Clara Valley Water District (SCVWD) staff had various discussions with City of Milpitas staff regarding the idea of entering into a Memorandum of Understanding (MOU) between the Santa Clara Valley Water District and City of Milpitas.

The City of Milpitas currently has two creek trail projects under construction (Coyote Creek and Berryessa Creek Trails), which have already been permitted by SCVWD. The MOU would not provide any benefit to these projects because they are already in progress. I have confirmed this with Mark Klemencic of SCVWD and Mr. Richard Santos, SCVWD Board member.

The City of San Jose does have an MOU, because they have several creek trail projects programmed for design and construction in the near future. The MOU introduces a streamlined approval process, by authorizing San Jose to proceed with these projects without having to obtain SCVWD Board approval each and every time.

Recommendation:

Note Receipt and File Report - No further action is necessary.

- * 11. **Status of Heritage Tree Program and Tree Planting Program (Staff Contact: Tambri Heyden, 586-3280 and Carol Randisi, 586-2601)**

Background:

The CAC workplan for 2005 includes the implementation of a heritage tree program. In 2004, the CAC completed a draft program which will be forwarded to Council once the existing Tree and Planting Ordinance has been revised to implement the proposed program. The revisions include adding a definition of heritage tree as a tree so designated upon a finding that it is unique and of importance to the community due to any of the following factors:

- a. It is an outstanding specimen of a desirable species.
- b. It is one of the largest or oldest trees in Milpitas.
- c. It possesses distinctive form, size, age, location, and/or historical significance.

The ordinance would provide that upon nomination by any person and with the written consent of the property owner, the City Council may designate a tree as a heritage tree.

The status of this ordinance revision is as follows: CAC review on August 3, 2005, Planning Commission on August 24th, City Council for the first reading of the ordinance on September 6, 2005 and second reading on September 20, 2005 along with the approval of the Heritage Tree Program that has been recommended by the CAC.

The Public Works Department continues to program the planting of 500 trees every fiscal year. The new trees are planted in new planting sites (such as medians and other right-of-way areas), vacant planting sites (such as on residential streets), and replacement sites where trees have been lost due to death, disease, storm damage or traffic accident. The target is to again plant 500 trees this fiscal year, and has budgeted for the planting of 500 trees in fiscal year 2005-06.

Recommendation: Note, receipt and file.

XVIII. ORDINANCES

- * 12. **Adopt Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I and Section 13.08 of Chapter 210 of Title V of the Milpitas Municipal Code to provide that Notices of Appeal to the City Council Shall only be Effective Upon Timely Receipt of Payment of the Fee Adopted or Amended by Resolution of the City Council and to Provide for Appeals of the Animal Regulation Administrator's Decisions to be Heard by the City Council (Staff Contact: Tambri Heyden, 586-3280 and Peter Spoerl, 586-3040)**

Background: The City's Animal Regulation Ordinance, adopted in 1995, provides the ability for violators to request a hearing conducted by the Animal Hearing Officer. As per the ordinance, decisions by the Officer, currently a staff member of the Housing Division, resulting from the administrative hearing can be appealed to an appeal board, made up of one or more persons, to be established by City Council resolution. Such an appeal board has never been formed and no one has formally submitted this type of written appeal. Proposed Ordinance No. 54.24 provides for appeals of the animal regulation administrative officer's decisions to be heard by the City Council. In response to the direction of the Council at the May 3rd Council meeting to allow for reimbursement of the appeal fee at the discretion of the Council if the Council approves the appeal, the City Attorney has determined it appropriate to amend the ordinance to

incorporate this desire, rather than to amend the master fee schedule resolution. Thus, the ordinance reflects this very minor change.

In addition, the proposed ordinance corrects an outdated section of the City's Municipal Code Standard Procedures Chapter 20 governing all types of appeals. By Resolution No. 6449, dated July 18th, 1995, the City Council adopted a comprehensive master fee schedule for all City fees and charges in order to recover the costs incurred by the City. This resolution raised the then-existing fee for appeals of administrative decisions to the City Council from \$25 to \$100. Section 5.05 of Chapter 20, however, still references the old fee of \$25, providing that a notice of appeal to the City Council shall not be effective unless a notice of appeal is filed and, where required, "said \$25 fee" paid within the time required. For the sake of internal consistency, the proposed ordinance would amend this section to provide that a notice of appeal requires payment of the fee adopted or amended by resolution of the City Council.

Recommendation:

1. Waive reading beyond the title.
2. Adopt Ordinance No. 54.24.

13. Consideration of Urgency Ordinance Establishing a 45-day Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries to Become Effective Immediately (Staff Contact: Steve Mattas, 586-3040)

Background: Recently, Planning staff has received several written and verbal inquiries regarding the land use application process for medical marijuana dispensaries. As the Council is aware, the operation and location of medical marijuana dispensaries is a complicated issue. State and federal law are not in agreement on whether such facilities are legal, the state's laws on the issue are not clear, and community sentiment regarding such facilities and the purpose of their existence is mixed. Furthermore, the existence and operation of dispensaries is a relatively new concept and the full scope of the potential impacts of dispensaries is not known, although other California communities in which dispensaries have opened have reported the occurrence of such negative secondary impacts as:

Increased crime in the vicinity of the dispensaries;
Robbery of patients as they go in or leave the dispensaries;
A burglary attempt on a dispensary;
Increased DUIs in the vicinity of the dispensaries;
Increased street dealing in the vicinity of the dispensaries;
Individuals smoking marijuana in the vicinity of the dispensaries; and
Reports of impacts on neighboring businesses due to the criminal element being drawn to dispensaries.

Based upon these reports, it is clear that allowing medical marijuana dispensaries within the City poses a risk to the public safety, health, and welfare. Planning staff, working in cooperation with the Interim City Manager and the City Attorney's office, is working to draft an amendment to the zoning ordinance to permit such dispensaries as conditional uses in three zoning districts (HS, M1 & M2) and to provide similar regulations as adult businesses. As an interim measure, however, the Council may wish to consider the adoption of a temporary moratorium on these uses until such time as the City can adopt a comprehensive regulatory framework.

Pursuant to Government Code Section 65858, the City may establish a 45-day moratorium on the establishment prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is

considering or studying or intends to study within a reasonable time. Moratoriums may be extended for up to 22 additional months provided that a current and immediate threat to the public safety, health and welfare still exists.

Recommendation: Consider the attached urgency ordinance and then:

1. Waive reading beyond the title; and
2. Adopt Ordinance No. 270 (pursuant to the provisions of Government Code 65858, the Ordinance shall be adopted and become effective immediately without a second reading if it receives a vote of at least four-fifths vote of the Council)

XIX. RESOLUTIONS

- * 14. **Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Program No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District No. 95-1 (LMD 95-1), provides for servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway landscaping on Ranch Drive.

The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 21, 2005). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

Recommendation: Adopt Resolution directing the preparation of the Annual Engineer's Report

- * 15. **Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Program No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: Landscaping and Lighting Maintenance Assessment District (LMD) No. 98-1 provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. The Landscaping and Lighting Act of 1972, requires adoption of the subject resolution, the preparation of an annual engineer's report and its subsequent approval by the City Council following a public hearing (scheduled for June 21, 2005). Upon conclusion of the public hearing, the assessment for the work is added to the property tax bills for those property owners included within the boundaries of the district.

Recommendation: Adopt Resolution directing the preparation of the Annual Engineer's Report.

- * 16. **Adopt Resolution Granting Initial Acceptance: Main Sewage Pump Station Demolition and Site Improvements, (Project No. 6079), (Staff Contact: Steve Erickson, 586-3414)**

Background: This project provided demolition of structures on the Main Sewage Pump Station land the City Council awarded the project to ICONCO, Inc. on September 21, 2004. The project has been successfully completed, and staff recommends that Council

grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$87,724.12.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$87,724.12.

*** 17. Adopt Resolution Granting Initial Acceptance: Singley Area Street Rehabilitation, Project No. 4200 - Phase 3 (Staff Contact: Doug De Vries, 586-3313)**

Background: The work consists of a replacement of existing curb and gutters, driveways, ramps, sidewalk and asphalt pavement section with new facilities, installation of asphalt concrete pavement, slurry seal, storm drain pipes, drainage inlets and subsurface drainage system. The project is located on various roadway segments in the Singley Area. The City Council awarded the project to Fanfa Inc. on May 4, 2004. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorize the reduction of the contractor's faithful performance bond to 10% of the original contract amount or \$108,537.98.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period, and reduction of the faithful performance bond to \$108,537.98.

XX. BIDS AND CONTRACTS

*** 18. Approve Agreement for Commercial Recycling Outreach Campaign to Pat Davis Design Group (Staff Contact: Leslie Stobbe, 586-3352)**

Background: The City's approved Source Reduction & Recycling Element Plan includes a Commercial Recycling Program (CRP) outreach to achieve and maintain the State's 50% disposal reduction requirement. Staff has requested CRP consulting proposals to: 1) design, print and mail two brochures targeted to retain customers recycling with the CRP and persuade new customers to start recycling; 2) design, print and mail the annual newsletter, and; 3) provide graphics for incentive items. Pat Davis Design Group was the top candidate out of bids received as shown below.

<u>Bidder</u>	<u>Amount</u>
Orloff / Williams	No Price Provided: Bid Non-responsive
PRX	\$48,990.00
Lynn M. Banks	\$23,442.50
Pat Davis Design	\$22,043.49

Orloff / Williams was deemed non-responsive because they did not comply with the pricing requirements of the RFP. Pat Davis Design Group submitted the lowest responsive price of \$22,043.49. Staff recommends a contingency of 15% be included for additional production charges for a total amount of \$25,350. Funding for this project is included in the current year Utility Engineering budget.

Recommendation: Approve agreement for consulting services with Pat Davis Design Group in an amount not to exceed \$25,350, subject to approval as to form by the City Attorney.

*** 19. Approve Agreement with Guttman & Blaevoet for HVAC Mechanical System Evaluation of City Hall (Staff Contact: Chris Schroeder, 586-3161 and Mark Rogge, 586-3403)**

Background: Guttman & Blaevoet are currently working on the design of the HVAC components for the New Library. Staff wishes to standardized the City's HVAC systems as much as possible to gain greater energy efficiency and decrease maintenance costs. Guttman & Blaevoet will perform a comprehensive analysis of the City Hall HVAC system and prepare written recommendations to achieve the aforementioned goals. The cost for this HVAC mechanical system evaluation of City Hall shall not exceed \$10,000.00. (There are sufficient funds available from the City Hall Project no. 8026 for this service).

Recommendation: Authorize the City Manager to execute a contract with Guttman & Blaevoet, subject to approval as to form by the City Attorney, in an amount not to exceed \$10,000.00.

*** 20. Approve the Agreement with Pyro Spectaculars for the Annual 4th Of July Fireworks Display (Staff Contact: Chris Schroeder, 586-3161)**

Background: The Fourth of July is traditionally marked by a display of fireworks. There are only two Fireworks vendors in the Bay Area. With offices in Oakland, Pyro Spectaculars is the only full service provider of "PyromusicalTM" fireworks displays in the Bay Area. They are also the premier provider of pyrotechnic devices and aerial fireworks displays in the world. Based on their track record of excellence, safety, custom designed set pieces and bright work; Pyro Spectaculars has been the vendor of choice for the City of Milpitas for the past eight years. Staff is requesting that this service be awarded as sole-source procurement as sanctioned in section I-2-5.03-4 of the Milpitas Municipal Code. (Funds are available in the Recreation Services operating budget for this service.)

Recommendation: Authorize the City Manager to execute the contract with Pyro Spectaculars, subject to approval as to form by the City Attorney, in an amount not to exceed \$19,500.00.

*** 21. Award Bid for Commercial Exercise Equipment (Staff Contact: Chris Schroeder, 586-3161)**

Background: Staff issued a Request for Quotation for five (5) pieces of commercial exercise equipment to nine (9) exercise equipment suppliers on Purchasing's bidders list, three (3) responded. These exercise units will be used to augment existing equipment, meeting increased membership growth and use, at the Sports Center. The following is a recap of the bids received including tax and freight:

<u>Bidder</u>	<u>Amount</u>
Rajala Therapy Sales	\$20,591.87
Life Fitness	\$17,257.52
AFP Advantage	\$16,801.37

After careful analysis staff recommends that the bid be awarded to Life Fitness even though their bid is \$456.15 higher due to the following reasons: 1) the specified equipment is compatible with existing equipment 2) continuity of preventive maintenance and parts, therefore saving maintenance costs in the long run. This is in accordance with Municipal Code Section I-2-4.02 "Justification for Acceptance of a High Bid". (There are sufficient funds available in the Milpitas Sports Center Phase 8 Project No. 8053 to purchase the exercise equipment.)

Recommendation: Award the bid for the purchase of the five (5) pieces of commercial exercise equipment to Life Fitness, in the amount of \$17,257.52.

- * 22. **Approve A Maintenance Agreement With Tiburon, Inc. For Software Support For The Police Department Records Management System (Staff Contact: Terry Medina, 586-2703)**

Background: In December of 1996, the City entered into an agreement with Tiburon, Inc. to provide a Police Records Management System (RMS). The system was upgraded in 2000 for Y2K compliance as part of the overall Enhanced Public Safety Capital Improvement Program (CIP). Since the initial upgrade, a new version of the software has been released and the system was upgraded again in 2002 because of the additional number of features that were of benefit to the Police Department. Tiburon Inc. provides software maintenance and support of the system through an annual maintenance agreement. The current maintenance agreement is due to expire on June 30, 2005 and requires renewal in order to maintain the software license and system support.

Tiburon, Inc. has provided software support and maintenance upgrades to the Police Records Management System for the City for the past 8 years. This software support includes the base system and all upgraded modules that include: Case Management, Crime Analysis, Gang System, Property Management, Traffic Management, Crime Statistics, and Warrant Tracking.

Approval of this maintenance agreement will provide a continuation of software support for the Police RMS and entitle the City to ongoing system enhancements as they become available from Tiburon, Inc. Since the original agreement and the subsequent upgrades Tiburon, Inc. has continually proven to be highly qualified and responsive to the needs of the Police Department.

The total cost for the annual maintenance agreement will not exceed \$39,000. Funding for this maintenance agreement has been included in the Information Services Department operating budget.

Recommendation: Authorize the City Manager to extend the current software support agreement between Tiburon, Inc. and the City of Milpitas in an amount not to exceed \$39,000.

- * 23. **Approve The Fourth Amendment To The Senior Nutrition Contract Between The County Of Santa Clara (Social Services) And The City Of Milpitas (Kathleen Yurchak, 586-3209)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older and serves an average of 75 meals per day, 249 days per year, for a total of 18,675 meals per year. Enclosed in the Council's agenda packet is a copy of the fourth Amendment to the Contract between the County of Santa Clara (Social Services) and the City of Milpitas. The total budget for the FY 2005/06 Nutrition Program, shared by the City of Milpitas and County of Santa Clara, is \$132,042. As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$66,021. Funding will be available upon City Council's adoption of the FY 05/06 operating budget. The contract is subject to approval as to form by the City Attorney.

Recommendation:

1. Approve the fourth amendment to the contract between the County of Santa Clara (Social Services) and the City of Milpitas effective July 1, 2005, through June 30, 2006.
2. Authorize payment to the County of Santa Clara for the amount of the contract, \$132,042.

*** 24 Approve the First Amendment to the Contract Between the City Of Milpitas and New Orient Restaurant and Authorize Payment (Staff Contact: Kathleen Yurchak, 586-3209)**

Background: The City of Milpitas has contracted with New Orient Restaurant to provide Asian meals twice a week at the Senior Nutrition Program offered at the Milpitas Senior Center since July 1, 2004. Enclosed in the Council's packet is the first Amendment to the contract between the City of Milpitas and New Orient Restaurant, a County of Santa Clara Nutrition Program approved restaurant. All funds have been budgeted in the County of Santa Clara's Senior Nutrition Program budget and Recreation Services FY 05/06 operating budget. The total budget for the 7,425 meals is \$25,988, which does not include the price of milk and the amendment to the contract stipulates invoicing will not exceed \$3.50 per meal. Our current caterer, Bateman, will serve the remaining 11,250 meals.

The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, 249 days per year, an average of 75 meals per day, for a total of 18,675 meals per year for both the Asian meals and the meals catered by Bateman. This contract is subject to approval as to form by the City Attorney.

Recommendation:

1. Approve the first Amendment to the contract between the City of Milpitas and New Orient Restaurant from July 1, 2005, through June 30, 2006, for the Senior Nutrition Program.
2. Authorize payment to New Orient Restaurant for the total amount of this contract, \$25,988, not to exceed \$3.50 per meal. Sufficient funds have been budgeted in Recreation Services operating budget for FY 05/06, upon City Council's adoption of the FY 05/06 budget.

*** 25. Approve Plans and Specifications and Authorize Advertisement for Bid Proposals: 2005 Slurry Seal Project (Project No. 4223) (Staff Contact: D. De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project consists of placing a pavement slurry seal on Lassen Avenue, Olympic Drive, Platt Avenue, Platt Court, Pheland Court, Saratoga Drive, Mt. Shasta Avenue, and Sonoma Drive. The Engineers Estimate for the work is approximately \$180,000. Project schedule anticipates award for construction in June 2005. A budget appropriation will be proposed once bids are received and a contract award is presented to Council. Funds are available in the Street Fund. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

- * 26. **Authorize the City Manager to Execute Agreement: Central Pacific Engineering, Inc., Sports Center Underwater Pool Lighting (Project No. 8163) (Staff Contact: G. Armendariz, 586-3317)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project will provide the replacement of existing water pool lighting at the Sports Center yard pool. This lighting upgrade will bring the swimming pool in compliance with the California Health Code, Section 3114B. Illumination of underwater areas provides direct vision and enables surveillance of all swimming activities. This project will also provide upgraded electrical panels, transformers and light fixtures in compliance with state health code. The project would include replacement of fixtures with low voltage (under 15-Volt), installation of 3 transformers, separation of low and high voltage electrical lines and two separate junction boxes.

Staff has interviewed several professional consultants, in conformance with the City's consultant selection process, and recommends that Central Pacific Engineering, Inc. provide the required professional engineering and construction support services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed \$25,150. which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with Central Pacific Engineering, Inc., in the amount of \$25,150, subject to approval as to form by the City Attorney.

- * 27. **Approve Plans and Specifications and Authorize the Advertisement for Bids: Berryessa Pump Station, Project No. 8138, (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is part of the approved five-year Capital Improvement Program (CIP). The Berryessa Storm Pump Station is located at Hidden Lake Park and provides drainage for portions of the City bounded by Calaveras Blvd. (on the south), Wrigley Creek (on the west), Jacklin Rd. (on the north), and Hwy. 680 (on the east). This pump station is 24 years old and needs to be rehabilitated. The three engines have exceeded their design (or useful) life. This project provides replacement of three diesel engines and engine and station controls and electrical systems at the Berryessa Storm Pump Station. This project includes replacement of the existing 7.5 HP with a 50 HP jockey pump to efficiently pump low flows during dry weather with an electric variable speed jockey pump rather than the large pumps that are more costly to operate. Work also includes replacing the existing roof, painting the station, installation of flap-gates on creek discharge pipes and retrofitting of vent pipes per the Storm Drain Master Plan.

Plans and specifications for the installation of the City pre-purchased equipment and the rehabilitation of the subject project have been completed. This project will include installation of: 50 HP jockey pump, three 185 HP diesel engines, three right angle drives, three 20,000 GPM vertical turbine, pumps station controls and minor accessories to make the system operational. Additional improvements will replace the existing roof, painting the station, and the retrofitting of vent pipes.

The Engineers estimate for this project is approximately \$600,000. An additional budget appropriation will be needed to award the project, which will be requested at the time of award. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review at the Office of the City Engineer.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

*** 28. Approve Specifications and Authorize Advertisement for Bid Proposals: Interim Senior Center Re-roofing, Project No. 8134 (Staff Contact: Mark Rogge, 586-3403)**

Background: Specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project will correct roof sagging due to existing HVAC rooftop equipment and will provide for a new roof.

The Engineers estimate cost for the work is approximately \$65,000, and funds are available in the project budget. A copy of the contract document cover sheet is included in the Council's agenda packets. Complete specifications are available for review in the office of the City Engineer.

Recommendation: Approve Interim Senior Center Re-roofing contract documents. Authorize advertising for bid proposals.

*** 29. Approve Debris Box Agreements With All Trash Company (Staff Contact: Darryl Wong, 586-3345)**

Background: In accordance with Title V, Chapter 200 of the Milpitas Municipal Code, debris box haulers are required to apply for an agreement authorizing the hauler to engage in the business of collecting and disposing of non-organic solid waste and/or construction and demolition debris produced, kept or accumulated within the city limits of Milpitas. The haulers are required to pay the City a compensatory fee equal to 12% of the total gross receipts actually collected or received. Council has approved previously submitted debris box agreements at the April 19, 2005 session. A new submittal has been received since this date. Staff has reviewed the application and recommends approval of the agreement.

Recommendation: Authorize the City Manager to execute debris box agreements with All Trash Company, subject to approval as to form by the City Attorney.

*** 30. Authorize City Manager To Execute Agreement Amendment: URS Corporation Americas (URS), Various Projects (Staff Contact: Doug De Vries, 586-3313)**

Background: On November 2, 1999, City Council awarded a consultant contract to O'Brien Kreitzberg (OBK), now doing business as URS Corporation Americas (URS), for project management services. Considering the current volume of Capital Improvement Program projects, which require intensive professional services during the design and construction phases staff recommends that URS continue to provide engineering support services for a variety of projects including Montague Expressway, Alviso Adobe, Berryessa and Oak Creek Storm Drain Pump Stations, Gibraltar Pump Station, Midtown and various other Capital Improvement Projects. A complete list of the projects requiring these services is attached as Exhibit C-6. The services include project management support, design, estimating, CAD drafting, scheduling, agency coordination, and tracking of project expenditures, and reimbursements for various grants.

In order to provide sufficient resources to complete the projects in the Capital Improvement Program in a timely manner, staff recommends that the contract with URS

be modified to include the projects shown in the attached list. URS will report to city staff in all phases of the projects selected.

An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services not to exceed \$230,000, which is considered reasonable for the work. There are sufficient funds in the project budgets to cover this additional expense.

Recommendation: Authorize the City Manager to execute the agreement amendment with URS Corporation Americas (URS) for project management fees not to exceed \$230,000, subject to approval as to form by the City Attorney.

XXI. CLAIMS AND DEMANDS

*** 31. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

\$7,370.00 to AB Truck Driving School for instruction and training for five (5) City employees to receive their class A and/or B license. Course fees include forty (40) hours of classroom instruction and behind the wheel training as well as books and supplies, physical exams, D.M.V. fees, D.M.V. print outs and drug testing. Public Works employees in the Maintenance Worker class are required by their job classifications to have their commercial drivers license. (Funds are available from the Public Works operating budget for this service).

Recommendation: Approve the purchase request.

*** 32. Release of Surplus Fire Equipment to the Milpitas Historical Society (Staff Contact: Chris Schroeder, 586-3161; Bill Weisgerber, 586-2811)**

Background: In 1983 the Ford Motor Company donated the last vehicle (an F-350, 4-wheel drive, pick-up truck) manufactured from the production line at the Milpitas Ford Motor Assembly Plant to the City of Milpitas. The vehicle (PT #163) served for 20 years as Patrol Tanker no. 2 in the Milpitas Fire Department, responding to firefighting and rescue emergencies in the hillside and Wildland-Urban Interface areas east of the City. The vehicle has reached the end of its service life and become surplus equipment scheduled to be disposed from the fleet. However, due to the intrinsic historical value of this vehicle, the Milpitas Historical Society has a strong interest in preserving the vehicle for posterity.

The Historical Society has requested that the vehicle be released to their custody for such historical purposes. The Society is prepared to take full title and storage responsibility for the vehicle.

Recommendation: Authorize the Purchasing Agent to release title and custody of surplus historical fire equipment (PT #163) to the Milpitas Historical Society, for the preservation of such equipment for posterity.

XXII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, JUNE 7, 2005, AT 7:00 P.M.**